

# Notice of Allowability

Application No.

09/766,442

Examiner

Jon Eric Angell

Applicant(s)

AUDONNET ET AL.

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## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the communication filed 6/25/04.
2. ☒ The allowed claim(s) is/are 1,4,5,16,18,19 and 21-40.
3. ☒ The drawings filed on 19 January 2001 are accepted by the Examiner.
4. ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☒ All b) ☐ Some\* c) ☐ None of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☒ Certified copies of the priority documents have been received in Application No. 09/760,574.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

## Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☒ Information Disclosure Statements (PTO-1449 or PTO/SB/08),  
Paper No./Mail Date 6/25/04, 5/21/03
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_.
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

Jon Eric Angell

### **DETAILED ACTION**

This Action is in response to the communication filed on 6/25/04. The amendment has been entered. Claims 3, 4, 6-15, 17 and 20 have been cancelled. New claims 39 and 40 have been added. Claims 1, 4, 5, 16, 18, 19 and 21-40 are currently pending in the application and are examined herein.

Applicant's arguments are addressed on a per section basis. The text of those sections of Title 35, U.S. Code not included in this Action can be found in a prior Office Action. Any rejections not reiterated in this action have been withdrawn as being obviated by the amendment of the claims and/or applicant's arguments.

### ***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on 6/25/04 is acknowledged. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

### ***Allowable Subject Matter***

Claims 1, 4, 5, 16, 18, 19 and 21-40 are allowed. The instant claims are drawn to a method for obtaining an immunogenic response comprising administering to a bovine or porcine (a) a DNA vaccine or immunogenic or immunological composition against a pathogen of a bovine or porcine comprising: (i) a plasmid containing and expressing a nucleotide sequence

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encoding an immunogen of a pathogen of the bovine or porcine; and (ii) a cationic lipid and (b) an inactivated, attenuated live, subunit or recombinant vaccine or immunogenic or immunological composition against a bovine or porcine pathogen, wherein (a) and (b) are administered together in a combination or sequentially. Therefore, the claims are essentially drawn to a method wherein a composition comprising 3 components is administered to a bovine or porcine in order to obtain an immune response in the bovine or porcine wherein the 3 components are (1) a plasmid containing and expressing a nucleotide sequence encoding an immunogen of a pathogen of the bovine or porcine; (2) a cationic lipid that meets the limitation (structure) set forth in the claims; and (3) an inactivated, attenuated live, subunit or recombinant vaccine or immunogenic or immunological composition against a bovine or porcine pathogen. The prior art does not teach a method comprising administering these 3 components to a bovine or porcine in order to obtain an immune response in the bovine or porcine. Furthermore, it would not have been obvious to one of ordinary skill in the art to administer all three components to an animal to obtain an immune response and have a reasonable expectation of success. As such, the rejection of claims under 35 USC 103 and under the judicially created doctrine of obvious-type double patenting are withdrawn.

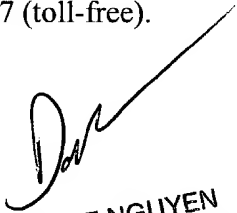
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon Eric Angell whose telephone number is 571-272-0756. The examiner can normally be reached on Mon-Fri, with every other Friday off.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John LeGuyader can be reached on 571-272-0760. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Jon Eric Angell, Ph.D.  
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DAVE T. NGUYEN  
PRIMARY EXAMINER